

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

QUINCY DeLMARIO VAUGHN,)	
Register No. 1081978,)	
)	
Plaintiff,)	
)	
v.)	No. 09-4056-CV-C-SOW
)	
LEON VICKERS, et al.,)	
)	
Defendants.)	

REPORT, RECOMMENDATION AND ORDER

A telephone conference was held on September 3, 2009, to address plaintiff's requests for preliminary injunctive relief.¹ Although the federal courts have broad power to grant or deny equitable relief in a civil rights action, Holt v. Sarver, 442 F.2d 304 (8th Cir. 1971), a "large degree of discretion is vested in the trial court" in determining whether an injunction should issue. American Home Investment Co. v. Bedel, 525 F.2d 1022, 1023 (8th Cir. 1975), cited with approval in Rittmiller v. Blex Oil, Inc., 624 F.2d 857 (8th Cir. 1980). See also Cole v. Benson, 760 F.2d 226 (8th Cir. 1985). In Dataphase Systems, Inc. v. C.L. Systems, Inc., 640 F.2d 109 (8th Cir. 1981), the court delineated the factors to be considered in ruling a motion for preliminary injunctive relief.

Whether a preliminary injunction should issue involves consideration of (1) the threat of irreparable harm to the plaintiff; (2) the state of balance between such harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that plaintiff will succeed on the merits; and (4) the public interest.

Id. at 113. Further, "[t]he dramatic and drastic power of injunctive force may be unleashed only against conditions generating a presently-existing actual threat; it may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights." Rogers v. Scurr,

¹This case was referred to the undersigned United States Magistrate Judge for processing in accord with the Magistrate Act, 28 U.S.C. § 636, and L.R. 72.1.

676 F.2d 1211, 1214 (8th Cir. 1981) (quoting Holiday Inns of America, Inc. v. B. & B. Corp., 409 F.2d 614, 618 (3d Cir. 1969)). Thus, the inquiry is "whether the balance of equities so favors the movant that justice requires the court to intervene to preserve the status quo until the merits are determined." Dataphase, 640 F.2d at 113. The burden of proof is on the party seeking injunctive relief. United States v. Dorgan, 522 F.2d 969, 973 (8th Cir. 1975).

Additionally, "a party moving for a preliminary injunction must necessarily establish a relationship between the injury claimed in the party's motion and the conduct asserted in the complaint." Devose v. Herrington, 42 F.3d 470 (8th Cir. 1994).

Based on the response and supporting documentation filed by defendants in opposition to plaintiff's request for preliminary injunctive relief and the discussion at the conference, it is recommended that plaintiff's motions be denied. Plaintiff is receiving regular and appropriate medical care.

Plaintiff's July 20, 2009 motion for extension of time to complete service of process is moot in light of the answer filed on July 30, 2009.

Plaintiff's motion of September 1, 2009 for an extension of time to file a response to defendants' answer is denied. A reply to an answer is to only be filed if ordered by the court.

IT IS, THEREFORE, ORDERED that plaintiff's motion for an extension of time to file a reply to defendants' answer is denied. [31] It is further

ORDERED that plaintiff's motion for an extension of time to complete service of process is denied as moot. [22] It is further

ORDERED that plaintiff's motion for a hearing to address preliminary injunctive relief is granted. [20] It is further

RECOMMENDED that plaintiff's motion for preliminary injunctive relief be denied. [29]

Under 28 U.S.C. § 636(b)(1), the parties may make specific written exceptions to this recommendation within twenty days. The District Judge will consider only exceptions to the specific proposed findings and recommendations of this report. Exceptions should not include matters outside of the report and recommendation. Other matters should be addressed in a separate pleading for consideration by the Magistrate Judge.

The statute provides for exceptions to be filed within ten days of the service of the report and recommendation. The court has extended that time to twenty days, and thus, additional time to file exceptions will not be granted unless there are exceptional circumstances. Failure to make specific written exceptions to this report and recommendation will result in a waiver of the right to appeal. See L.R. 74.1(a)(2).

Dated this 9th day of September, 2009, at Jefferson City, Missouri.

/s/ William A. Knox

WILLIAM A. KNOX
United States Magistrate Judge